

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASPHALT PRODUCTS UNLIMITED, INC.,
Petitioner,

v.

BLACKLIDGE EMULSIONS, INC.,
Patent Owner.

Case IPR2017-01241 (Patent 7,503,724 B2)
Case IPR2017-01242 (Patent 7,918,624 B2)

Before MITCHELL G. WEATHERLY, JAMES A. TARTAL, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

WEATHERLY, *Administrative Patent Judge*.

Conduct of the Proceeding
37 C.F.R. § 42.5

As required under 37 C.F.R. § 42.121(a), Patent Owner requested a conference call to confer with the Board regarding its desire to file a motion to amend. The panel conducted the conference call on January 16, 2018, which was also attended by Messrs. Triggs and Seyki for Patent Owner and Messrs. Leachman and Waddell for Petitioner. Patent Owner indicated that it intends to file a contingent motion to amend by no later than Due Date 1 set forth in the Case Management and Scheduling Order, Paper 24.

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After discussion, the panel informed the parties that it would set forth a schedule for the parties to present issues related to Patent Owner's motion in a series of four briefs, and the parties confirmed their desire to do so. The panel generally described the schedule set forth below. Except as otherwise stated in this Paper, the Case Management and Scheduling Order entered October 24, 2017, Paper 24 in both proceedings, remains in effect.

A. DUE DATES

This order sets due dates for the parties to take action from this point forward in the proceeding. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of the stipulation, specifically identifying the changed due dates, must be promptly filed. The parties may not stipulate to an extension of DUE DATES 6 or 7. Any stipulated extension of DUE DATE 4 shall not modify the deadline set forth in this Order by which a party must request oral argument.

In stipulating to different times, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony.

1. DUE DATE 1

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

The patent owner must file any such response or motion to amend by DUE DATE 1. Any motion to amend need only address those issues set forth in

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35 U.S.C. § 316(d) and 37 C.F.R. § 42.121. The motion to amend shall be limited to 6,000 words, which shall be counted as set forth in 37 C.F.R. § 42.24.

If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.

2. DUE DATE 2

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2. The opposition to the motion to amend shall address any arguments set forth in the motion to amend and may present any evidence and argument relating to the patentability of substitute claims that Patent Owner proposes in its motion to amend. The opposition to the motion to amend shall be limited to 12,000 words, which shall be counted as set forth in 37 C.F.R. § 42.24.

3. DUE DATE 3

Patent Owner must file any reply to Petitioner's opposition to Patent Owner's motion to amend by DUE DATE 3. Patent Owner's reply may respond to arguments raised by Petitioner relating to Patent Owner's compliance with the requirements of 35 U.S.C. § 316(d) and 37 C.F.R. § 42.121 and present Patent Owner's opposition to Petitioner's arguments regarding the patentability of Patent Owner's proposed substitute claims. Patent Owner's reply shall be limited to 12,000 words, which shall be counted as set forth in 37 C.F.R. § 42.24.

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3.5 DUE DATE 3.5

Petitioner must file any surreply in support of its arguments relating to the patentability of Patent Owner's proposed substitute claims by DUE DATE 3.5. Petitioner's surreply may respond to Patent Owner's arguments for patentability as presented in Patent Owner's reply. Petitioner's surreply shall be limited to 6,000 words, which shall be counted as set forth in 37 C.F.R. § 42.24.

4. DUE DATE 4

a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (*see* section A.7 of Paper 24) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) by DUE DATE 4.

c. Each party must file any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

5. DUE DATE 5

a. Each party must file any reply to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

6. DUE DATE 6

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

7. DUE DATE 7

The oral argument (if requested by either party) is set for DUE DATE 7.

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DUE DATE APPENDIX

DUE DATE 1 January 24, 2018

Patent owner's response to the petition

Patent owner's motion to amend the patent

DUE DATE 2 April 16, 2018

Petitioner's reply to patent owner's response to petition

Petitioner's opposition to motion to amend

DUE DATE 3 June 14, 2018

Patent owner's reply to petitioner's opposition to motion to amend

DUE DATE 3.5 July 6, 2018

Petitioner's surreply to Patent Owner's reply to Petitioner's opposition
to motion to amend

DUE DATE 4 July 18, 2018

Motion for observation regarding cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5 July 25, 2018

Response to observation

Opposition to motion to exclude

DUE DATE 6 August 1, 2018

Reply to opposition to motion to exclude

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